

DRAFT

A meeting of the New Hampshire Water Well Board was held on August 5th, 2004 at 9:30 am, in rooms 111& 112, 29 Hazen Drive, Concord, NH, 03302.

Present were: Terrell Swain, Chairman
Rick Skarinka (Designee, Secretary)
Board members: Peter Caswell, Christopher Covell, Bart Cushing, Jeffrey Tasker and David Wunsch.
Staff: Rick Schofield and Tim Wilson.

Chairman Swain brought the meeting to order at 9:30 and welcomed visitors and introduced members of the Board.

Approval of Minutes

Upon motion by Mr. Cushing, seconded by Mr. Tasker, the Board voted unanimously to accept the Minutes of the June 3rd, 2004 meeting.

Complaint

Mitchell/Colonial Plumbing and Heating

Mr. Schofield began by noting that the complaint had been heard at the last meeting. He briefly reviewed the complaint stating that the Mitchell's believe a misdiagnosis was made by Colonial Plumbing and Heating for a "no water call." Colonial performed a complete system replacement and it was later found that there was a leak at the pitless adaptor. The Mitchell's were charged \$3,286 which they felt was unnecessary given the misdiagnosis. Colonial refunded \$2,086 to the Mitchell's in a settlement. Mr. Schofield inspected the installation and found a number of violations of the well code and national electrical code. A letter of deficiency was issued by DES on June 3rd, 2004 citing those violations. A response letter was received from Mr. Benedict of Colonial Plumbing and Heating on July 30th, 2004. In his letter Mr. Benedict informed the Board that the wiring deficiencies were corrected on June 18th and Mr. Mitchell was provided with a quote to install the ground wire which is a billable item. He also stated that he would be contacting the office to schedule seminar time to get his technicians up to speed on code changes. Mr. Schofield finished by saying that Mr. Benedict had not been present at the June 3rd meeting and was requested by the Board to attend today's meeting to respond to the complaint.

Chairman Swain identified that neither party were in attendance. The Chairman asked Mr. Schofield if the parties were notified of the meeting. Mr. Schofield reported that both parties had been notified of the meeting by certified mail with receipt returned.

Upon motion by Mr. Skarinka and seconded by Mr. Caswell, the Board voted unanimously to table the complaint until later in the meeting, in hopes that the parties would arrive for discussion on the matter.

Cyr / Forest Pump & Filter Company Inc.

Mr. Schofield stated that he received a complaint on May 10th, 2004. In review, Forest Pump installed a new pumping system for a new well at the Cyr residence June 6th, 2000. The home had an existing point well that went dry and it was decided to use the existing water line from the point well because the ground was frozen and excavation would be difficult. The pitless adapter was installed at 26" below the casing not conforming to the 48" requirement by rule. The water line froze February 14th, 2004 and the Cyr's hired Forest Pump to install in pipe heat tape. The work was done and a bill was given to Cyr. Mr. Cyr is complaining that the regulation requires that the water line be installed 4 feet below grade and that it was not. Mr. Schofield stated that DES has taken no action at this time.

Chairman Swain called Mr. Arnold L. Cyr to the table and he was sworn in under oath.

Mr. Cyr gave testimony on the need for a drilled well to supply his home which was installed by Drillrite, Inc., and that he contracted with Forest Pump to provide the pumping system. Bickford Excavation was hired to provide the necessary trench work and dug the line trench to a 5 foot depth from the new well to the home. Mr. Cyr supplied the Board with photographs and diagrams of the well locations, the depth from grade to the pitless adapter and other related items. There were lingering questions regarding the extent of work done by Bickford as no invoice or statement of work was available. One of the photographs showed the new well head at grade level protected by a manhole cover. Through further questioning Mr. Cyr stated that he agreed to the work being done by Forest Pump and Filter by signing the invoice, and with respect to the wiring part of the install, understood that the work was considered to be a temporary fix to the problem. After further questioning by the Board, Mr. Cyr was dismissed from the table.

Chairman Swain called Mr. Jay Levesque to the table and he was sworn in under oath. Mr. Levesque testified that his company would never perform the kind of work that Mr. Cyr was suggesting and that it was Mr. Cyr and Mr. Bickford that made final decisions regarding the well head height and any excavation work. He felt that Doug Hatch of Drillrite, Inc., would never set a well head at or below grade level and went on to say that setting a water line to a 26" depth in a 5 foot trench made no sense. He also stated that Forest Pump technicians had left the job site when finished and were not present when Bickford returned to complete the backfilling of the trench. He stated that Mr. Cyr was actively involved in the project and agreed to finish the wiring which was considered temporary. After further questioning by the Board, Mr. Levesque was dismissed from the table.

After having heard testimony from both parties Chairman Swain acknowledged that much of the testimony was a recollection of events for a job that was performed four years ago and that it was difficult to accurately determine the facts. With this he recommended that the two parties come to a settlement. Both parties agreed to take the matter up and report back before the meetings end. Upon motion by Mr. Skarinka and seconded by Mr. Cushing the Board voted unanimously to table the complaint until later in the meeting, affording the parties time to discuss possible settlement options.

Licensing**Request to Retain Existing License Number-Mark T. Young**

Mr. Schofield reported that Policy Well and Pump (license # 1578) purchased Windham Pump Co. Inc., from Mark Young (present) who was operating under license # 142. Mr. Young wished to retain # 142 for his new company, Malcolm Young Water Well Co. Policy Well submitted a letter to the NH Water Well Board stating that they had no objections to his request. The membership discussed with staff the programs policy for assigning license numbers. Upon motion by Mr. Caswell and seconded by Mr. Covell the Board voted unanimously to allow Mark Young to retain license number 142.

Request for Exemption-Gerard Bridgham

Mr. Schofield stated that Mr. Bridgham (present) was requesting an exemption or an extension for completion of his continuing education requirement for medical reasons. After a brief discussion on the matter and upon motion by Mr. Tasker and seconded by Mr. Cushing the Board voted unanimously to grant an extension until June 30, 2005. Mr. Bridgham may obtain the required 2 hours anytime during the period, however, he will be required to obtain a total of 4 hours of continuing education if he chooses to wait until next years renewal.

Renewals

Mr. Schofield announced that 425 renewals had been sent out on July 29th. He also added that the July 2004 Water Well Newsletter had been completed and mailed out with the renewals. Mr. Wunsch suggested that some material be added to the heading of the newsletter to create a more professional appearance which might include among other things a listing of current Board members, volume/issue numbers. He added that a logo should be adopted by the Board which would help in the recognition of the Board's activities.

New Applicants

The membership reviewed a list of new license applicants. Mr. Schofield reported that the Board had received a complaint against one of the applicants, Mr. Augustine J. Messineo d/b/a "Mr. Plumber Inc." by the Town of Pelham. Mr. Messineo is a licensed plumber but does not hold a pump installer's license. The membership also noted that Mr. Messineo's application was submitted without references and was incomplete. Upon motion by Mr. Skarinka and seconded by Mr. Covell the Board voted unanimously to hold the license application of Mr. Messineo until the complaint was resolved including any possible enforcement action issued by DES.

The item of New Applicants was tabled to continue the Cyr / Forest Pump & Filter complaint.

Complaint – Continued**Cyr / Forest Pump & Filter Company Inc.**

Chairman Swain asked Mr. Levesque back to the table who stated that the parties had come to an agreement. It was reported that Mr. Cyr would pay to have a new trench dug from the well to the foundation as well as bear the cost of any insulating materials if they were needed. Forest Pump & Filter will supply and install a new water line from the well to the foundation. The hole from the existing pitless adaptor will be plugged. Forest pump also agreed to drop the remaining balance owed by Mr. Cyr.

Chairman Swain announced that the complaint would be held open until notice from both parties was received stating that the work was completed satisfying the agreed upon terms.

New Applicants-Continued

The Board identified three additional applications which were incomplete, and notified staff to delay any further processing of those applications, including the issuance of the written exam, until the applications were complete. Mr. Covell stressed the importance of notifying applicants that an incomplete filing will not be accepted. Mr. Schofield explained that the applications in question were just received a few days before the meeting and that the applicants are notified by letter that all licenses must be approved by the Board before issuance. In many cases the references were missing which the Board depends on to evaluate an applicant's eligibility. It was the consensus of the Board that a complete application must include three written references and certification that the company is registered with the Secretary of State prior to sitting for the written exam.

New Business

Low Yield Wells

Mr. Schofield reported that he has received many calls and complaints from new home owners regarding wells with no water or insufficient water. He summarized the details in each case for the membership and asked the Board to consider two important issues: the need for accurate reporting of well yield; and the need to establish a standardized yield test after a well has been hydro-fractured. He noted that many well completion reports do not reflect the fact that a well was hydro-fractured. This problem usually occurs when a well is hydro-fractured by an independent well development company or the well was developed several months after the original construction. This results in an inaccurate well yield being reported to the Board and ultimately any future homeowner. Several companies are licensed water well contractors but only hydro-frac wells. These contractors do not report the results of well development to the Board. He recommended that companies in the business of hydro-fracturing should also be required to report yield results as do drillers. He also recommended that the Board should consider establishing a standard for conducting a yield test after hydro-fracturing, adding that the procedure for post development yield tests varies widely between companies and there appears to be some question about the accuracy or sustainability of the reported yields by some contractors. Of concern is that reported yields may include water that was pumped in during hydrofracturing, and additionally, that yield tests in general are not done long enough to establish sustainability after a hydro-frac.

Mr. Covell echoed those sentiments stating that he receives calls weekly about dry wells on properties, both new and existing. As a public member he stressed the point that \$500,000+ homes are worthless without water and regardless of property value all people without water are equally affected. He urged

the Board to consider this issue and find some way to improve the situation. Many opinions were expressed on this topic. In general it was felt that a higher level of education of the consumer was needed around the adequacy of a homes water supply, and utilizing the water well database is one place people can begin. Some members expressed that inaccurate disclosure and a lack of due diligence is part of the problem in several industries that wind up impacting the homeowner. Exaggerated yield test results or inaccurate reporting by drillers, false reporting of yield by the builder/contractor to the homeowner, or incomplete work done by home inspectors where yield tests are required by lending companies.

Mr. Wunsch pointed out that some of these issues were out of the Boards jurisdiction. He made the argument that the equipment used by drillers to determine yield does not have the precision to accurately measure very low yields and not being able to effectively distinguish between .5 gallons and 1 gallon is a 100% error.

Mr. Schofield reiterated that accurate reporting and disclosure is at the crux of the matter but the issue of disclosure is a legislative matter. He noted that the use of the online database has been a valuable tool for the consumer but if reported yields are inaccurate then people using the database are relying on false information. Several members felt that the well should be installed and tested before a septic design is drawn up and a home constructed.

Chairman Swain asked for opinions on having wells certified by a licensed well contractor as a part of disclosure on real estate transfers. Many felt that certifying wells for every property transaction would be unmanageable but would be more realistic on new construction only.

Mr. Covell felt strongly that if a septic design needs certification and approval then a well and its viability should be equally if not more important, adding that a septic system serves no purpose if there is no water. Members discussed how post hydro-frac yield testing might be standardized, and that yield test data disclosure during a property transfer should be used exclusively for accurate disclosure and not for the purposes of making blanket statements about potential water use.

Mr. Wunsch and others agreed that yield numbers are less important than if a well can adequately recharge after it has been pumped out repeatedly.

Mr. Cushing asserted that the efforts in educational outreach on the importance of water quality testing have changed the landscape in recent years where now, real estate transfers don't occur without a bacteria test in spite of the fact that there are no state regulations on water quality of private wells. If the same outreach effort is made to the lending industry with respect to water quantity then the same shift will happen, where property transfers will not occur without a sustainable water supply.

Mr. Skarinka felt that much of this boils down to the need for better education across industries and to the consumer.

Mr. Schofield brought the conversation back to the need for accurate reporting and establishing a standardized yield test after a well has been hydro-fractured. The discussion turned briefly to rulemaking before Chairman Swain called to continue the discussion at the next meeting.

Enforcement**Reporting Compliance Check**

Mr. Schofield reported that at the last meeting during its annual reporting compliance check, the Board identified 8 water well contractors who failed to file reports in 2003 or reported significantly fewer reports than in previous years. Letters were sent to those contractors requesting a written response within 14 days, and that any outstanding reports be filed within 30 days. Mr. Schofield reviewed the responses from each contractor.

Mr. Schofield continued the report on four additional contractors who were placed on probation for non-reporting in 2003. Notices were sent in June to each contractor requesting that a signed and notarized affidavit be submitted to the Board identifying the number of wells constructed and pumps installed from June 5th, 2003 through June 5th, 2004. Three of the contractors filed affidavits, however, K Beebe Inc., had not responded. Mr. Schofield noted that in a telephone conversation on June 16th, while making inquiries into his license renewal, Mr. Beebe stated that he had not drilled any wells in New Hampshire during that period. Upon motion by Mr. Wunsch and seconded by Mr. Tasker the Board voted unanimously that Mr. Beebe submit an affidavit within 10 days or an administrative hearing would be scheduled for license revocation.

Reporting Enforcement Policy Review

Mr. Schofield had been requested to review the program Enforcement Policy for non-reporting, which was adopted by the Board June 5th, 2002. Mr. Schofield discussed the various ways that violations of the reporting requirement are identified, citing public requests for well information, utilizing the well inventory database, consumer complaints and scheduled program enforcement initiatives. He went on to explain that violations are characterized as being either suspected or confirmed and outlined the actions that may be taken to investigate the violation. With respect to confirmed violations, more specific steps can be initiated and certain criteria must be met. Several criteria are used in determining an appropriate response including: (1) The number of previous violations of the reporting requirement; (2) The willfulness and/or negligence involved in the violation; (3) Good faith efforts to comply with the requirements of RSA 482-B and the rules of the Board; (4) The violation occurred before July 18, 1998.

Other Actions

Mr. Schofield reported that five contractors were issued letters of deficiency for non-reporting and in all of the cases the wells were public water supplies. The reports had been filed with other programs within DES however they were never submitted to the Board as required. Of the five contractors, Judd Goodwin has not responded to the letter of deficiency. Letters were also sent to eight plumbing contractors in Vermont notifying them of the licensing requirement for installing pumps and added that only one contractor responded by applying for a license.

Complaint-Continued**Mitchell / Colonial Plumbing and Heating**

Chairman Swain re-opened the complaint and noted that neither party was present. It was reiterated that Mr. Benedict had been requested to come before the Board. Mr. Cushing felt that a fine should be imposed for the electrical code violations cited. Mr. Schofield pointed out that a response to the complaint had been received from Mr. Benedict informing the Board that the deficiencies had been corrected. Members felt that bringing the violations up to code did not absolve him from appearing before the Board as requested. Upon motion by Mr. Cushing and seconded by Mr. Caswell, the Board voted unanimously to place Mr. Benedict on probation for a period of 90 days and mandated that he attend electrical training associated with pump installations within 90 days. Failure to comply with the order would result in a hearing scheduled for Mr. Benedict to show cause why his license should not be suspended. The Board strongly suggested that Mr. Benedict's pump service technicians also attend the additional training.

New Business-Continued

Setbacks to State Roads

Mr. Schofield reported the facts regarding a new well recently constructed for Patricia Brown at 474 Canaan Street in Canaan by Valley Artesian Well Co. The Brown's well is contaminated from road salt with 1,100 mg/l Cl. Mr. Schofield was notified by the Department of Transportation (DOT) that the well was found to be within the 50 foot setback from the state highway right-of-way established by RSA 228:34, which rendered the Brown's ineligible for assistance from DOT. Mr. Schofield recommended that the Board establish a 50 foot setback requirement from state highway right-of-way's so that the Board's rules are consistent with RSA 228:34 and DES setback requirements for public water supplies. With this requirement if a well is conforming in its location and salt contamination occurs, then the homeowner has the ability to receive assistance from the state. There was consensus among the membership that the 50 foot setback standard established in RSA 228:34 should be adopted by the Board.

The Board had further discussion about the recent similar setback issues by Valley Artesian Well Co., including the Keefe well in Walpole, and one which resulted in a complaint. Mr. Cushing noted that special methods of construction were not used with these wells and that salt contamination is a widely known problem in Canaan. He added that in each of these cases the wells have been located within the state's right-of-way. **Staff was instructed to send a letter to Valley notifying the company of the three documented wells encroaching on state highway right-of-way's.**

Artesian Flow Discharge Lines

Mr. Schofield reported on a 1992 well, drilled by Judd Goodwin, in Strafford that has been contaminated with E. Coli bacteria and the family living in the home has been sick with Girardia. The well is a flowing artesian well and the overflow discharge line was directed to a nearby stream, which without an NPDES permit, violates Federal rules. He noted that Forest Pump and Filter installed the discharge line directly into the stream. When the artesian flow stops in the summer months, the stream flows into the well! Mr. Schofield asked the Board if any rules changes should be made so that backflow prevention is required using an air gap. Board members that install overflow discharge lines commented that they have had no problems with the current rule requiring swing type check valves and didn't feel that amendments to the rules were necessary. No action was taken.

NHDOT Request for License / Exemption

Mr. Schofield reported that he received a letter from NHDOT requesting that a license be issued to Mike Dennis for the purposes of decommissioning monitoring wells on their properties. In addition they requested that the written exam and annual license fee be waived. Mr. Cushing and other members suggested that a technical drilling license would be appropriate but that competency should be established by taking the exam. There was further discussion on the experience of Mr. Dennis and if the license type should be restricted. Upon motion by Mr. Cushing and seconded by Mr. Tasker the Board voted unanimously to issue a Technical Drillers license to NHDOT, with Mr. Dennis as the qualified individual, and to grant the exemption for the \$225 licensing fee, however, all other requirements in obtaining a license be met.

The meeting was adjourned.

Rene Pelletier
Water Well Board Secretary